

By: Murr, et al.

H.B. No. 20

Substitute the following for H.B. No. 20:

By: Vasut

C.S.H.B. No. 20

A BILL TO BE ENTITLED

AN ACT

relating to the release of defendants on bail.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Damon Allen Act.

SECTION 2. Article 1.07, Code of Criminal Procedure, is amended to read as follows:

Art. 1.07. RIGHT TO BAIL. (a) Except as provided by this article or by Chapter 17, any person [All prisoners] shall be eligible for bail [bailable] unless the person is accused of committing a [for] capital offense for which [offenses when] the proof is evident. This provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

(b) A person accused of committing a violent or sexual offense, as defined by Section 11a, Article I, Texas Constitution, may be denied bail pending trial if a judge or magistrate determines that requiring bail and conditions of release is insufficient to reasonably ensure:

(1) the person's appearance in court as required; or  
(2) the safety of the community, law enforcement, or the victim of the alleged offense.

(c) A person accused of committing an offense under Section 19.03, Penal Code, shall be denied bail pending trial unless a judge or magistrate determines by clear and convincing evidence that,

1 based on the existence of extraordinary circumstances, the judge or  
2 magistrate is able to set bail and conditions of release sufficient  
3 to reasonably ensure:

- 4 (1) the person's appearance in court as required; and  
5 (2) the safety of the community and of law  
6 enforcement.

7 (d) A person accused of committing a sexual offense, as  
8 defined by Section 11a, Article I, Texas Constitution, involving a  
9 victim younger than 17 years of age, shall be denied bail pending  
10 trial unless a judge or magistrate determines by clear and  
11 convincing evidence that, based on the existence of extraordinary  
12 circumstances, the judge or magistrate is able to set bail and  
13 conditions of release sufficient to reasonably ensure:

- 14 (1) the person's appearance in court as required; and  
15 (2) the safety of the community, law enforcement, and  
16 the victim of the alleged offense.

17 (e) A judge or magistrate who denies bail under Subsection  
18 (c) or (d) must prepare a written order that includes findings of  
19 fact and a statement explaining the judge or magistrate's reason  
20 for the denial.

21 SECTION 3. Chapter 17, Code of Criminal Procedure, is  
22 amended by adding Articles 17.021, 17.022, 17.023, 17.024, and  
23 17.028 to read as follows:

24 Art. 17.021. PRETRIAL PUBLIC SAFETY ASSESSMENT. (a) The  
25 Office of Court Administration of the Texas Judicial System shall  
26 develop and maintain a validated pretrial public safety assessment  
27 that is standardized for statewide use, that is available for use

1 for purposes of Article 17.15, and that:

2 (1) is objective, validated for its intended use, and  
3 standardized;

4 (2) is based on an analysis of empirical data and risk  
5 factors relevant to:

6 (A) the risk of a defendant intentionally failing  
7 to appear in court as required; and

8 (B) the safety of the community, law enforcement,  
9 and the victim of the alleged offense if the defendant is released;

10 (3) does not consider factors that disproportionately  
11 affect persons who are members of racial or ethnic minority groups  
12 or who are socioeconomically disadvantaged;

13 (4) has been demonstrated to produce results that are  
14 unbiased with respect to the race or ethnicity of defendants and  
15 does not produce a disproportionate outcome; and

16 (5) is designed to function in a transparent manner  
17 with respect to the public and each defendant to whom the assessment  
18 is applied.

19 (b) The office shall provide access to the pretrial public  
20 safety assessment to the appropriate officials in each county at no  
21 cost. This subsection may not be construed to require the office to  
22 provide a county official or magistrate with any equipment or  
23 support related to accessing or using the pretrial public safety  
24 assessment.

25 (c) The office shall collect data relating to the use and  
26 efficiency of the pretrial public safety assessment. The office  
27 shall consider that data, along with other relevant information,

1 and shall, not later than November 1 of each even-numbered year,  
2 make appropriate changes or updates to the pretrial public safety  
3 assessment to ensure compliance with this article. Not later than  
4 December 1 of each even-numbered year, the office shall submit a  
5 report containing the data collected and describing any changes or  
6 updates made to the pretrial public safety assessment to the  
7 governor, the lieutenant governor, the speaker of the house of  
8 representatives, and the presiding officers of the standing  
9 committees of each house of the legislature with jurisdiction over  
10 the judiciary.

11 (d) The office shall create and post on the office's public  
12 Internet website a sample result that could occur through the use of  
13 the pretrial public safety assessment and shall include an  
14 explanation of the data relied on by the assessment.

15 Art. 17.022. PRETRIAL PUBLIC SAFETY ASSESSMENT. (a) A  
16 magistrate considering the release on bail of a defendant charged  
17 with an offense punishable as a Class B misdemeanor or any higher  
18 category of offense shall order that:

19 (1) the personal bond office established under Article  
20 17.42 for the county in which the defendant is being detained, or  
21 other suitably trained person, use the validated pretrial public  
22 safety assessment developed under Article 17.021 to conduct a  
23 pretrial public safety assessment with respect to the defendant;  
24 and

25 (2) the results of the assessment conducted under  
26 Subdivision (1) be provided to the magistrate within 48 hours of the  
27 defendant's arrest.

1       (b) A magistrate may not, without the consent of the  
2 sheriff, order a sheriff or sheriff's department personnel to  
3 conduct a pretrial public safety assessment under Subsection (a).

4       (c) Notwithstanding Subsection (a), a magistrate may  
5 personally conduct a pretrial public safety assessment using the  
6 validated pretrial public safety assessment developed under  
7 Article 17.021.

8       (d) The magistrate shall consider the results of the  
9 pretrial public safety assessment before making a bail decision.

10       Art. 17.023. AUTHORITY TO RELEASE ON BAIL IN CERTAIN CASES.

11 (a) This article applies only to a defendant charged with an  
12 offense that is:

13               (1) punishable as a felony; or

14               (2) a misdemeanor punishable by confinement.

15       (b) Notwithstanding any other law, a defendant to whom this  
16 article applies may be released on bail only by a magistrate who is:

17               (1) a resident of this state and one of the counties  
18 served by the magistrate; and

19               (2) in compliance with the training requirements of  
20 Article 17.024.

21       (c) A magistrate is not eligible to release on bail a  
22 defendant described by Subsection (a) if the magistrate:

23               (1) has been removed from office by impeachment, by  
24 the supreme court, by the governor on address to the legislature, by  
25 a tribunal reviewing a recommendation of the State Commission on  
26 Judicial Conduct, or by the legislature's abolition of the  
27 magistrate's court; or

1           (2) has resigned from office after having received  
2 notice that formal proceedings by the State Commission on Judicial  
3 Conduct have been instituted as provided by Section 33.022,  
4 Government Code, and before final disposition of the proceedings.

5           Art. 17.024. TRAINING ON DUTIES REGARDING BAIL. (a) The  
6 Office of Court Administration of the Texas Judicial System shall  
7 develop or approve training courses regarding a magistrate's duties  
8 under Article 17.022 and duties with respect to setting bail in  
9 criminal cases. The courses developed must include:

10           (1) a four-hour training course for a magistrate who  
11 is licensed to practice law in this state;

12           (2) a 16-hour training course for a magistrate who is  
13 not licensed to practice law in this state; and

14           (3) a four-hour continuing education course for all  
15 magistrates.

16           (b) The office shall provide for a method of certifying that  
17 a magistrate has successfully completed a training course required  
18 under this article and has demonstrated competency of the course  
19 content in a manner acceptable to the office.

20           (c) A magistrate is in compliance with the training  
21 requirements of this article if:

22           (1) the magistrate is licensed to practice law in this  
23 state and:

24                   (A) not later than the 90th day after the date the  
25 magistrate takes office, the magistrate successfully completes the  
26 course described by Subsection (a)(1);

27                   (B) successfully completes the course described

1 by Subsection (a)(3) in each subsequent state fiscal biennium in  
2 which the magistrate serves; and

3 (C) demonstrates competency in a manner  
4 acceptable to the office; or

5 (2) the magistrate is not licensed to practice law in  
6 this state and:

7 (A) not later than the 90th day after the date the  
8 magistrate takes office, the magistrate successfully completes the  
9 course described by Subsection (a)(2);

10 (B) successfully completes the course described  
11 by Subsection (a)(3) in each subsequent state fiscal biennium in  
12 which the magistrate serves; and

13 (C) demonstrates competency in a manner  
14 acceptable to the office.

15 (c-1) Notwithstanding Subsection (c), a magistrate who is  
16 serving on December 1, 2021, is considered to be in compliance with  
17 Subsection (c)(1)(A) or (c)(2)(A) if the magistrate successfully  
18 completes the applicable training course not later than June 1,  
19 2022. This subsection expires January 1, 2023.

20 (d) Any course developed or approved by the office under  
21 this article may be administered by the Texas Justice Court  
22 Training Center, the Texas Municipal Courts Education Center, the  
23 Texas Association of Counties, the Texas Center for the Judiciary,  
24 or a similar entity.

25 Art. 17.028. BAIL DECISION. (a) Without unnecessary delay  
26 but not later than 48 hours after a defendant is arrested, the  
27 magistrate performing duties under Article 15.17 with respect to

1 the defendant shall order, after considering all circumstances and  
2 the results of the pretrial public safety assessment conducted  
3 under Article 17.022, that the defendant be:

4 (1) released on personal bond with or without  
5 conditions;

6 (2) released on monetary bond with or without  
7 conditions; or

8 (3) denied bail in accordance with the Texas  
9 Constitution and other law.

10 (b) In making a bail decision under this article, the  
11 magistrate shall impose, as applicable, the least restrictive  
12 conditions and minimum amount of bail, whether personal bond or  
13 monetary bond, necessary to reasonably ensure the defendant's  
14 appearance in court as required and the safety of the community, law  
15 enforcement, and the victim of the alleged offense.

16 (c) In each criminal case, unless specifically provided by  
17 other law, there is a rebuttable presumption that bail, conditions  
18 of release, or both bail and conditions of release are sufficient to  
19 reasonably ensure the defendant's appearance in court as required  
20 and the safety of the community, law enforcement, and the victim of  
21 the alleged offense. For purposes of rebutting the presumption,  
22 the court is not required to hold an evidentiary hearing.

23 (d) A judge may not adopt a bail schedule or enter a standing  
24 order related to bail that:

25 (1) is inconsistent with this article; or

26 (2) authorizes a magistrate to make a bail decision  
27 for a defendant without considering the results of the defendant's

1 pretrial public safety assessment.

2 (e) This article does not prohibit a sheriff or other peace  
3 officer, or a jailer licensed under Chapter 1701, Occupations Code,  
4 from accepting bail under Article 17.20 or 17.22 before a pretrial  
5 public safety assessment has been conducted with respect to the  
6 defendant or before a bail decision has been made by a magistrate  
7 under this article.

8 SECTION 4. Article 17.03, Code of Criminal Procedure, is  
9 amended by amending Subsection (b) and adding Subsection (b-2) to  
10 read as follows:

11 (b) Only the court before whom the case is pending may  
12 release on personal bond a defendant who:

13 (1) is charged with an offense under the following  
14 sections of the Penal Code:

15 (A) [~~Section 19.03 (Capital Murder)~~];

16 [~~(B)~~] Section 20.04 (Aggravated Kidnapping);

17 (B) [~~(C) Section 22.021 (Aggravated Sexual~~  
18 ~~Assault)~~];

19 [~~(D) Section 22.03 (Deadly Assault on Law~~  
20 ~~Enforcement or Corrections Officer, Member or Employee of Board of~~  
21 ~~Pardons and Paroles, or Court Participant)~~];

22 [~~(E)~~] Section 22.04 (Injury to a Child, Elderly  
23 Individual, or Disabled Individual);

24 (C) [~~(F)~~] Section 29.03 (Aggravated Robbery);

25 (D) [~~(G)~~] Section 30.02 (Burglary); or

26 (E) [~~(H)~~] Section 71.02 (Engaging in Organized  
27 Criminal Activity);

1                    [~~(I) Section 21.02 (Continuous Sexual Abuse of~~  
2 ~~Young Child or Children); or~~

3                    [~~(J) Section 20A.03 (Continuous Trafficking of~~  
4 ~~Persons);]~~

5                    (2) is charged with a felony under Chapter 481, Health  
6 and Safety Code, or Section 485.033, Health and Safety Code,  
7 punishable by imprisonment for a minimum term or by a maximum fine  
8 that is more than a minimum term or maximum fine for a first degree  
9 felony; or

10                    (3) does not submit to testing for the presence of a  
11 controlled substance in the defendant's body as requested by the  
12 court or magistrate under Subsection (c) of this article or submits  
13 to testing and the test shows evidence of the presence of a  
14 controlled substance in the defendant's body.

15                    (b-2) Notwithstanding any other law, a defendant may not be  
16 released on personal bond if the defendant is charged with an  
17 offense under the following provisions of the Penal Code:

18                    (1) Section 19.02 (Murder);

19                    (2) Section 19.03 (Capital Murder);

20                    (3) Section 20A.02 (Trafficking of Persons);

21                    (4) Section 20A.03 (Continuous Trafficking of  
22 Persons);

23                    (5) Section 21.02 (Continuous Sexual Abuse of Young  
24 Child or Children);

25                    (6) Section 21.11 (Indecency with a Child);

26                    (7) Section 22.021 (Aggravated Sexual Assault);

27                    (8) Section 43.04 (Aggravated Promotion of

1 Prostitution);

2 (9) Section 43.05 (Compelling Prostitution); or

3 (10) Section 43.25 (Sexual Performance by a Child).

4 SECTION 5. Article 17.15, Code of Criminal Procedure, is  
5 amended to read as follows:

6 Art. 17.15. RULES FOR SETTING [~~FIXING~~] AMOUNT OF BAIL. (a)  
7 The amount of bail to be required in any case is to be regulated by  
8 the court, judge, magistrate, or officer taking the bail in  
9 accordance with Articles 17.20, 17.21, and 17.22 and is [~~;~~ ~~they are~~  
10 ~~to be~~] governed [~~in the exercise of this discretion~~] by the  
11 Constitution and [~~by~~] the following rules:

12 (1) [1.] The bail shall be sufficiently high to give  
13 reasonable assurance that the undertaking will be complied with.

14 (2) [2.] The power to require bail is not to be so  
15 used as to make it an instrument of oppression.

16 (3) [3.] The nature of the offense, [~~and~~] the  
17 circumstances under which the offense [~~it~~] was committed, and the  
18 defendant's criminal history, including acts of family violence,  
19 shall [~~are to~~] be considered, except that a misdemeanor or an  
20 offense under Chapter 481, Health and Safety Code, that occurred  
21 more than 10 years before the current offense may not be considered  
22 unless the previous offense involved the manufacture or delivery of  
23 a controlled substance or caused bodily injury, as defined by  
24 Section 1.07, Penal Code, to another, or unless good cause  
25 otherwise exists for considering that offense.

26 (4) [4.] The ability to make bail shall [~~is to~~] be  
27 considered [~~regarded~~], and proof may be taken upon this point.

1           (5) ~~[5.]~~ The future safety of a victim of the alleged  
2 offense, law enforcement, and the community shall be considered.

3           (6) The results of any pretrial public safety  
4 assessment conducted using the validated pretrial public safety  
5 assessment developed under Article 17.021 shall be considered.

6           (7) Any other relevant facts or circumstances may be  
7 considered.

8           (b) In this article, "family violence" has the meaning  
9 assigned by Section 71.004, Family Code.

10           SECTION 6. Chapter 17, Code of Criminal Procedure, is  
11 amended by adding Articles 17.50 and 17.51 to read as follows:

12           Art. 17.50. NOTICE OF CONDITIONS. (a) As soon as  
13 practicable but not later than the next business day after the date  
14 a magistrate issues an order imposing a condition of release on bond  
15 for a defendant or modifying or removing a condition previously  
16 imposed, the clerk of the court shall send a copy of the order to:

17           (1) the appropriate attorney representing the state;  
18 and

19           (2) either:

20           (A) the chief of police in the municipality where  
21 the defendant resides, if the defendant resides in a municipality;  
22 or

23           (B) the sheriff of the county where the defendant  
24 resides, if the defendant does not reside in a municipality.

25           (b) A clerk of the court may delay sending a copy of the  
26 order under Subsection (a) only if the clerk lacks information  
27 necessary to ensure service and enforcement.

1        (c) If an order described by Subsection (a) prohibits a  
2 defendant from going to or near a child care facility or school, the  
3 clerk of the court shall send a copy of the order to the child care  
4 facility or school.

5        (d) The copy of the order and any related information may be  
6 sent electronically or in another manner that can be accessed by the  
7 recipient.

8        (e) The magistrate or the magistrate's designee shall  
9 provide written notice to the defendant of:

10            (1) the conditions of release on bond; and

11            (2) the penalties for violating a condition of  
12 release.

13        (f) The magistrate shall make a separate record of the  
14 notice provided to the defendant under Subsection (e).

15        Art. 17.51. REPORTING OF CONDITIONS. A chief of police or  
16 sheriff who receives a copy of an order under Article 17.50(a), or  
17 the chief's or sheriff's designee, shall, as soon as practicable but  
18 not later than the 10th day after the date the copy is received,  
19 enter information relating to the condition of release into the  
20 appropriate database of the statewide law enforcement information  
21 system maintained by the Department of Public Safety or modify or  
22 remove information, as appropriate.

23        SECTION 7. As soon as practicable but not later than  
24 December 1, 2021, the Office of Court Administration of the Texas  
25 Judicial System shall create and provide access to the appropriate  
26 officials in each county the validated pretrial public safety  
27 assessment developed under Article 17.021, Code of Criminal

1 Procedure, as added by this Act, and any related forms and  
2 materials, at no cost. If those items are made available before  
3 December 1, 2021, the office shall notify each court clerk, judge or  
4 other magistrate, and office of an attorney representing the state.

5 SECTION 8. As soon as practicable but not later than  
6 December 1, 2021, the Office of Court Administration of the Texas  
7 Judicial System shall develop or approve and make available the  
8 training courses and certification method required under Article  
9 17.024, Code of Criminal Procedure, as added by this Act. If those  
10 items are made available before December 1, 2021, the office shall  
11 notify each court clerk, judge or other magistrate, and office of an  
12 attorney representing the state.

13 SECTION 9. The changes in law made by this Act apply only to  
14 a person who is arrested on or after the effective date of this Act.  
15 A person arrested before the effective date of this Act is governed  
16 by the law in effect on the date the person was arrested, and the  
17 former law is continued in effect for that purpose.

18 SECTION 10. (a) Except as provided by Subsections (b) and  
19 (c) of this section, this Act takes effect December 1, 2021.

20 (b) Articles 17.021 and 17.024, Code of Criminal Procedure,  
21 as added by this Act, and Sections 7 and 8 of this Act take effect  
22 September 1, 2021.

23 (c) Section 2 of this Act takes effect December 1, 2021, but  
24 only if the constitutional amendment proposed by the 87th  
25 Legislature, Regular Session, 2021, to authorize the denial of bail  
26 to an accused person if necessary to ensure the person's appearance  
27 in court and the safety of the community, law enforcement, and the

1 victim of the alleged offense, and requiring the denial of bail to a  
2 person accused of capital murder or a sexual offense involving  
3 children absent extraordinary circumstances is approved by the  
4 voters. If that amendment is not approved by the voters, Section 2  
5 of this Act has no effect.